1953. **File No.** S Bij 3

K

Legal **DEPARTMENT** 53

Examined E **BRANCH**

Subject:— Suits - Bijapur

C S. No. 154 of 1952.

Dattatray Kashinath Chhatre --- Plff.

v/s

The State of Bombay. ----- Deft

Re: For recovery of a sum of Rs. 3,100 being the alleged amount of rent claimed by him in respect of seven shops.

32(E)

File No. S. Bij 3/53

Std. Scott. Slip 24-B

3/53

C.S.No.154 of 1952

In the Court of the Civil Judge,

Senior Division, Bijapur.

1. Dattatraya Kashinath Chhatre, Age 63 Plaintiff

Landlord, Bijapur.

Vs.

2. The Province of Bombay. Defendent.

Claim Rs.3100 ..

Herein, I, D.K.Chhatre, the Plaintiff abovenamed bet to submit as follows:-

1. The plaintiff is the owner of C.T.S.1742,1743,1712 and 1713 situated in Ward No.II in the City of Bijapur. He has recently built a market in these city survey Numbers known as Chhatre's Market, consisting of many shops on the grount floor and many rooms and halls on the first and second floors, suitable for the purposes of offices for business purposes and for shops.

2. The Collector of Bijapur as the agent and representative of and on behalf of the defendent requisitioned and took possession of seven shops on the ground floor with the total area of 1320 square feet in C.T.S.No.1743 on 27-4-1949 by his order R.T.N. 423(S). He subsequently vacate these shops and gave permission to the plaintiff to let out these shops on 27-9-1949. The Municipal rental value of these seven shops is Rs.3500 per year i.e. Rs. 500/- per shop per year. The defendent has not paid any rent for the period of his occupation. The plaintiff wrote several letters and reminders putting forth his demand but the defendent has not given any definite reply, nor has paid any rent. The plaintiff claims Rs.1750 as the total rent due for the period of his occupation plus Rs.350/- as the rent for one month in lieu of notice at Rs. fifty per shop per month i.e. Rs.2100 in all.

3. The Collector of Bijapur, on behalf of the defendent and as its agent and representative requisitioned four shops from out of the above mentioned market situated

situated in C.T.S. No. 1712 (wrongly mentioned as C.T.S. 1713 in the order) by his order CCY/shop/R.Q.N. dated 13-5-49) and took possession of the shops on the same day. These premises were vacated on 13-9-1949. The Municpal rental value of these four shops is Rs. 2300 per year. The plaintiff claims Rs. 50 as rent per shop per month and one month's rent in addition in lieu of notice. The Plaintiff therefore claims Rs.1000 (one thousand) in all on this account.

4. Other buildings situated near the suit premises though old and poor in material and structure fetch monthly rent of two to three annas per square foot. The plaintiff has newly built the premises in suit at a great cost and hence the rent claimed by him is reasonable and proper.

5. The plaintiff wrote several letters and reminders to the Collector of Bijapur including the detailed reminders dated 19-7-1950 and 28-4-1951. But as yet no rent has been paid nor any definite reply has been received from the Collector so far.

6. The Cause of action for the recovery of rent accrued on the 1st of every month from the commencment of the two tenancies.

7. The plaintiff and the defendent reside within the jurisdiction of this court and the property to which the claim in suit relates is situated in Bijapur within the jurisdiction of this court.

8. The suit is valued at Rs. 3100/- and Court fee is paid on this amount.

9- Notice as required by section 80 of the Civil Procedure Code has been served on the Collector of Bijapur on 25-8-1951. by registered post.

10. Time for filing the suit having elapsed in the summer vacation the suit is filed today on the opening day and is in time.

11. The plaintiff prays

that a decree be passed against the defendent for

5 7

for the recovery of Rs.3100 as claimed in paras 2 & 3 above together with ~~the~~ costs of suit and future interest on the amount claimed from the date of suit till recovery.

Bijapur.
~~27~~ 2-6-1952.

I D.K.Chhatre of Bijapur, the plaintiff above named do hereby solemnly affirm that the contents of paras 1 to 11 of the plaint are true to may knoledge and belief.

Bijapur,
2-6-1952

Drafted as per instructions of the plaintiff and filed in the Court on 2-6-1952.

PLEADER

S — 7

Bijapur Civil Suit No.154 of 1952.

This is a suit filed by Shri Dattatraya Kashinaty Chhatre of Bijapur against the State of Bombay for the recovery of a sum of Rs.3100/- being the alleged amount of rent claimed by him in respect of seven shops situated on the ground floor of his building in C.T.S.No.1743 and four shops situated in his building in C.T.S.No.1712 which buildings were requisitioned by the Collector of Bijapur under his No.RTN-423(s) dated 27-4-1949 and No.CCY/Shop(R.Q.N.) Br. dated 13-5-1949 respectively, one for the purpose of the office of the Rationing Officer, Bijapur and the other for opening a Govt. cloth shop at Bijapur. The possession of the shops on the ground floor of building in C.T.S.No.1743 was taken by the R.O.Bijapur from the plff. on 3-5-1949 and handed over to him back on 11-6-49, while that of the shops in building in C.T.S.No.1712 was taken by the Mamlatdar, Bijapur on 17-5-49 and returned to the plff. on or about 13-9-49.

2. The suit is defensible.

3. Defence of the same may be sanctioned on the lines of the accompanying brief.

5/2

Sol(M.L)

5/2

Secy., (R.D.)

9/2

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
09 FEB 1953

THE SECRETARY TO
LEGAL DEPARTMENT
File No. 3468
Sub. 11/2/53
E

X No. 2598/E
dt. 9-2-53.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION
AT BIJAPUR.

Civil Suit No. 154 of 1952.

1. Dattatraya Kasinath Chatre .... Plff.

Vs

1. The Province of Bombay .... Deft

Herein the defendant's Written-statement is as follows:-

(1). The suit is bad as the State of Bombay is not named as defendant in this suit.

(2). The possession of the shops on the ground floor of the building in C.T.S.No.1743 was taken by the Rationing Officer from the Plaintiff on 3-5-1949 and handed over back to the plaintiff on 11-6-1949. The allegations in Para 2 of the Plaint which are inconsistent with what is stated above are not admitted and are denied.

(3). The possession of the shops in the building in C.T.S.No.1712 was taken by the Mamlatdar of Bijapur on 17-5-1949 and returned to the Plaintiff on or about 13-9-1949 after the order of the Collector No. CCY shop(RQ dated 3-9-1949. The allegations in Para 3 of the Plaint which are inconsistent with what is stated above are denied.

(4). The allegation in Para 2 of the Plaint that the Municipal rental of the shops on the ground floor of the building in C.T.S.No.1743 is Rs.3560 or Rs.500 per shop per year is denied. Similarly the allegation in Para 3 of the Plaint that the Municipal rental value of the shops referred to Para 3 of the plaint is Rs.2300 per year is denied.

(5). The plff's claim of Rs.1750 and Rs.2100 as in para 2 of the Plaint and his claim of Rs.1000 ~~at the rate of Rs.50/-~~ as in para 3 of the plaint is highly excessive.

(7) ~~(6).~~ The plaintiff is not entitled to one month's rent in addition in lieu of notice as claimed by him in Paras 2 and 3 of the plaint, nor is he entitled to the same at the rates of Rs.350 and Rs.50 resepectively as claimed by him in paras 2 and 3 of the Plaint.

(8) ~~(7).~~ The allegations in Para 4 of the plaint that other buildings fetch a monthly rental of two to three annas per squafe foot and that the rent claimed by him is reasonable and proper are denied. The allegation in para 6 of the plaint is denied.

(14) ~~(8)~~ The plaintiff is not entitled to any of the relief prayed for by him.

(9). The premises in suit were requistioned by the Collector under the Bombay Land Requisition Act , and the plff would be entitled to recover not rent but compensation as determined by the compensation officer. The defendant is not liable to pay rent as such to the plff and therefore the plff's claim for rent is not tenable.

(10). The plff's remedy is to apply to the compensation officer appointed under the Land Requisition Act [to] for determining the amount of compensation and the Civil Court has no jurisdiction to determine the compensation in respect of the requisitioned premises.

(11). Till the amount of compensation is determined by the compensation Office The plaintiff has no right to recover the amount claimed by him in this suit. (even as compensation)

(6) ~~(12).~~ The rate at which the plaintiff claims rent is highly excessive.

(12) ~~(13).~~ Rent or compensation ~~xxx~~ in respect of the premises requisitioned under the orders of Collector No. R TN.423(S) of 27-4-1949 and CCY shop(RQN) BR of 13-5-1949 could not be more than Rs.150/- and Rs.30/- respectively per month.

(13) ~~(14).~~ The plaintiff's claim ~~is~~ in suit is denied.

On these grounds among others it is submitted that Plt's suit be dismissed with costs.

District Government Pleader, Bijapur.

I, A.C. Angadi B.A.LL.B., District Government Pleader Bijapur, hereby declare that what is stated in Paras 1 to 14 above is true on information received and believed to be true. Signed in Bijapur on _____

District Government Pleader, Bijapur.

Immediate

No. 4095/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 2nd March 1953.

Subject:- Civil Suit No. 154 of 1952

MEMORANDUM.

With reference to his letter No. 333 dated the 25/2/53 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Bijapur is informed that two copies of the revised ~~approved~~ draft are forwarded herewith.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

Suits :

Bijapur.

For recovery of a sum of Rs. 3,100 being the alleged amount of rent claimed by him in respect of seven shops.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No: 6641/E.

Bombay Castle, 8th April 1953.

Letter from the Collector of Bijapur, No. LAW-211, dated the 31st July 1952—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No. 154 OF 1952.
Dattatraya Kashinath Chhatre ... ... Plaintiff;
versus
The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Bijapur, No. 2560/E, dated the 7th February 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

L Leg. H 16—1

[P.T.O.

To

The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Subtd after usc
File in S. Bijapur /53
23/7/53
S. S. (Rd)
271

47
15

BIJAPUR CIVIL SUIT No. 154 OF 1952.

Chronological Statement of Facts.

The plaintiff is the owner of buildings situated in C.T.S. Nos. 1743 and 1712 in Ward No. II in the city of Bijapur. Both these buildings were requisitioned by the Collector, Bijapur, under section 5 of the Bombay Land Requisition Act, 1948, under his Orders No. RTN. 423(s), dated 27th April 1949 and No. CCY/shop (RQN)/Br., dated 13th May 1949 respectively, one for the purpose of the office of the Rationing Officer, Bijapur and the other for opening a Government Cloth Shop at Bijapur. The present suit relates to the seven shops on the ground floor of the building in C.T.S. No. 1743 and four shops in the building in C. T. S. No. 1712 which has been wrongly described as C. T. S. No. 1713 in the requisition order. The possession of the shops on the ground floor of the building in C.T.S. No. 1743 was taken by the Rationing Officer from the plaintiff on 3rd May 1949 and handed over back to him on 11th June 1949, while that of the shops in the building in C.T.S. No. 1712 was taken by the Mamlatdar Bijapur, on 17th May 1949 and returned to the plaintiff on or about 13th September 1949 after these later shops were derequisitioned by the Collector under his order No. CCY. Shop (RQN) dated 3rd September 1949. It may here be mentioned that no such order derequisitioning the shops on the ground floor of the building in CTS. No. 1743 was passed by the Collector and it is alleged by the plaintiff that they were vacated on 27th September 1949 and not on 11th June 1949 as stated above. Secondly, no order fixing compensation under section 8 of the Bombay Land Requisition Act, has so far been passed in respect of either of these premises. But in respect of the premises in CTS. No. 1712 the rent has been fixed by the Collector under his No. CCY/shop/RQN, dated 21st October 1949 on the recommendation of the Executive Engineer, Bijapur. The plaintiff having not received any rent or compensation in respect of these premises gave notice of suit to the Collector on 21st August 1951 and filed the present suit on 2nd June 1952 for the recovery of Rs. 3,100 being the amount of rent claimed by him in respect of the aforesaid shops.

Grounds of Defence.

1. *Frame of suit.*—The suit is instituted against the Province of Bombay. Section 79 of the Code of Civil Procedure as amended by the Adaptation Order of 1950 requires that the authority to be named as defendant, shall be in the case of a suit against a State Government, the State. As the State of Bombay is not named as defendant in the present case, the suit is bad and liable to be dismissed.

2. *Merits.*—The plaintiff has filed this suit for the recovery of Rs. 2,100 as rent in respect of the seven rooms on the ground floor of the building in C. T. S. No. 1743 and 1,000 in respect of the four rooms in building in C.T.S. No. 1742. The above premises having been requisitioned by the Collector, what the plaintiff would be entitled to recover in respect of them is compensation as determined by the Compensation Officer, and not rent. Please see in this connection section 8(*1*) of the Bombay Land Requisition Act, 1948 which provides *inter alia* that when any land is requisitioned there shall be paid compensation to persons having interest in such land, the amount of which shall be determined by an officer authorised in

this behalf by the State Government. Accordingly, Government's liability to pay compensation to the plaintiff in respect of the aforesaid shops will have to be admitted. But Government is not liable to pay rent, as such, to the plaintiff. Its liability to pay rent as such should therefore be denied.

As regards the amount of compensation, the plaintiff would be entitled to recover only the amount as determined by the Compensation Officer under section 8 of the Bombay Land Requisition Act. No such amount seems to have been so far determined by the Compensation Officer in respect of these shops and in view of the above provision of law the Civil Court will have no jurisdiction to determine it. It has been held by the High Court that when a Compensation Officer is appointed under the Land Requisition Act in respect of requisitioned premises, the proper remedy available to the owner of the premises is to apply to that officer for determining compensation, and the Civil Court has no jurisdiction to determine compensation in respect of the requisitioned premises. So the only remedy open to the plaintiff is to approach the Compensation Officer and get the amount of compensation payable to him in respect of these shops first determined by him. Till such amount of compensation is determined by a Compensation Officer the plaintiff would not be entitled to claim even as compensation the amount now claimed by him. The right of the plaintiff to recover the amount in question should therefore be denied. Furthermore, it should be urged that the rate at which the plaintiff claims rent in respect of the shops in question is excessive. Attention of the District Government Pleader is also invited to the order of the District Magistrate at p. 97 in File II in which he has fixed Rs. 30 per month as rent in respect of the building in CTS No. 1712, which has presumably been wrongly described as C.T.S. No. 1713, as in the requisition order. He is requested to ascertain from the Collector whether the rent of Rs. 30 in respect of the building has been fixed by him as Compensation Officer under section 8 of the Bombay Land Requisition Act. If so, the District Government Pleader should urge that in respect of the four shops of the building in C.T.S. No. 1712 the amount of compensation has been determined under section 8 of the Bombay Land Requisition Act and the plaintiff is not legally entitled to recover anything more than that amount. If the Collector's order is not passed by him as the Compensation Officer, then the plaintiff's remedy is to apply to the Compensation Officer for fixing the compensation as stated above.

Furthermore in respect of the shops on the ground floor in C.T.S. No. 1743 it has been alleged by the plaintiff that these shops were vacated and he was given permission to let them only on 27th September 1949 (*vide* paragraph 2 of the plaint). It seems, however that these rooms were vacated and the possession thereof was handed over to the plaintiff by the Rationing Officer on 11th June 1949 and not on 27th September 1949 as stated by the plaintiff. The above statement of the plaintiff is therefore false and it should be denied.

For all these reasons it should be urged that the plaintiff's suit fails and it may be dismissed with costs.

S. Bijapur (New) 24/7/[illegible]

3/57

No. 1016 of 1953.
1st August 1953.

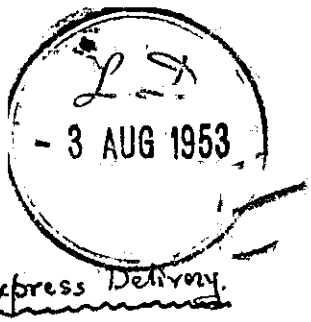
15 4 9

To

The Remembrancer of Legal Affairs,

Secretariat, Bombay.

Subject: Bijapur Civil Suit No.154/1952.
1. Dattatraya Chatre. Plff.
Vs.
1. The Province of Bombay. Deft.

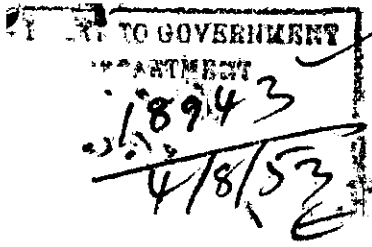


Express Delivery.

Sir,

The plaintiff has made an application for amendment in the plaint. I have sent herewith copy of his application. It is marked A by me. The court has passed an order that I should put in my say by 7-8-1953.

2. I have sent herewith a draft of the objections opposing the application. It is marked "B". The draft of the objections approved by of by you may please be sent to me.



3. In case the amendment is allowed by the Court, I propose to put in an additional Written-statement. I have sent herewith a draft of the same. this marked C by me. A draft of the additional

Written-statement as approved of by you may also be sent to me.

4. As I am required to put in my say by 7-8-1953, I request you to send to me the draft of the objections and of the additional Written-statement as early as possible.

Yours faithfully,

Ahurad

District Government Pleader,

Bijapur.

Submitted for orders
the matter is fixed on
7.8.53
Jh
4/7

SOL(MB) The objections to be amended
as proposed & the additional Affidavit
as approved by D.G.P. may be
filed accordingly Jh 4/8

(A)

54

19

C.S.No.154 of 1952.

In the Court of the Civil Judge,
Senior Division, Bijapur.

1. Dattatraya Kashinath Chatre of Bijapur. Plff.

Vs.

1. The State of Bombay. Deft.

Herein the plaintiff above named begs to apply as under.

The defendant in his written statement has raised two technical objections namely:-

(1) In para 1 of the written-statement the Defendant contends that the defend nt ought to have been described as the State of Bombay. The State of Bomabay and the Province of Bombay mean the same entity.

(2) Secondly in para 9 of the Written statement the Defendant contends that the plaintiff is not entitled to recover rent but is entitled to compensation. This contention also can be easily explained as rent means compensation for use and occupation of the buildings in suit.

It is therefore prayed that the plaint may be amended as follows:-

(1) In the title of the plaint in the name and description of the defendant the word "Province" may be struck out and the word "State" may be inserted in its place.

(2) In para 2 of the plaint between the words "The -- defendant has not paid any rent" and "for the period of his occupation" the words "as compensation may be added.

Similarly asfter the word "Rent" in all places whereever it occurs in the same para and in paras 3,4,5 and 6 the words " as compensation" may be added.

These amendments do not in any way change the nature of the suit. They are necessary to remove the objections of the defendant and are nedessary in the interests of justice.

It is prayed that the above mentioned amendments may be allowed to be made in the plaint.

Bijapur. Sd.D.K.Chatre.
Date:1-8-53.

Herein I .D.K.Chatre of Bijapur, do hereby solemnly affirm that the contents of the above application are true to my knowledge and belief.

Bijapur.1-8-53. Sd. D.K.Chatre.

Filed in Court.
1-8-1953. Sd.K.G.Kurandwad.
Pleader.

ORDER. The Government pleader to have his say by the 7th inst.
1-8-53. Sd. M.H.Kazi.

(A) (B) 53 21

In the Court of the Civil Judge

Senior Division, Bijapur.

Civil Suit No. 154/1952.

1. Dattatraya Chatre. Plaintiff.

Vs.

1. The Province of Bombay. Defendant.

Herein the objections of the defendant in respect of the amendment sought for by plaintiff by Ex.17 are as follows:-

1. This defendant opposes the plaintiff's application for amendment.
2. The allegations in the last sentence of paras 1 and 2 of the application at the beginning are not correct.
3. The allegations in the last but one sub-para in para 2 of the prayer are not correct.
4. The amendment would introduce a new and inconsistent case and the application for amendment is made at a very late stage.

It is therefore submitted that the application be dismissed with costs.

District Government Pleader,

Bijapur.

I, A.C.Angadi, B.A.LL B., District Government Pleader, Bijapur heregy declare that what is stated in paras 1 to 4 above is true on information received and believed to be true.

Signed in Bijapur on

District Government Pleader,

Bijapur.

(c)

23 53

In the Court of the Civil Judge,

Senior Division, Bijapur.

Civil Suit No. 154 of 1952.

1. Dattatraya Chatre. Plaintiff.

Vs.

1. The State of Bombay. Defendant.

Herein the Additional Written-statement of the defendant is as follows:-

1. The notice of suit given by the plaintiff is ~~not~~ in respect of suit against the Province of Bombay. The notice of suit is in respect of recovery of rent and not in -- respect of compensation. The suit is thus bad for want of notice as required by Section 79 and 80 of the Code of the Civil Procedure.

2. The defendant by this written-statement adopts ~~objects~~ and puts forth all the contentions set forth in the written-statement to the suit already filed in this suit.

3. The Civil Court has no jurisdiction to entertain plaintiff's suit for rent, or compensation or for rent as

compensation for reasons stated in para 10 ~~of the~~
and other paras of the Written-Statements already put in.

District Government Pleader,

Bijapur

I, A.C.Angadi, B.A~~LL~~.B., District Government Pleader, Bijapur hereby declare that what is stated in the paras 1 to 3 above is true on information received and believed to be true.

Signed in Bijapur on

District Government Pleader,

Bijapur.

Civil Revision Application No.224 of 1951.

The State of Bombay (Original Defendant) ... Applicant.

versus

Parshuram Damodar Vaidya (Ori.Plaintiff) ... Opponent.

Application praying that the decision of B.A.Chaugule, Exquire, Civil Judge (S.D.) at Poona on Exhibit No.17 in suit No.1382 of 1949 may be set aside.

Mr. M.G.Chitale for the Government Pleader for the Applicant.

Mr. K.B.Sukhtankar for Mr. M.M.Virkar, Advocate for the Opponent.

Coram:- Chagla C.J. 25th January 1952.

Oral Judgment:- A bungalow was requisitioned by Government under the Land Requisition Act. The order of requisition was passed on the 9th of June 1948 and the bungalow was requisitioned on the 16th June 1948. Long correspondence ensued between the owner and the Government as to the rent that should be paid to the owner for the bungalow, but nothing came out of this correspondence. On the 4th of April 1949 the plaintiff sent a notice to Government that he would proceed to file a suit unless compensation was paid. On the 13th April 1949 the Government issued a notification under section 8 appointing the Collector to be the officer for determining compensation and the necessary rules were framed and gazetted on the 15th May 1949. The suit was filed on the 27th June 1949.

Now in my opinion the Court below was in error in holding that the Court had jurisdiction to determine the

compensation. Sec.8 sets up a special tribunal for determining compensation and therefore the Civil Court's jurisdiction is taken away. There is also a claim for damages against the Government. That claim is also barred by reason of sec.17(2). I would therefore hold that the Court has no jurisdiction and the result of holding that would be that the suit would be dismissed.

With regard to costs, in my opinion the whole attitude of Government in this case is most deplorable. Law gives the power to Government to requisition property, but then Government ought to see that proper compensation is paid and is paid expeditiously to the citizen whose property has been taken away. In this case, although sec.8 was in the statute, no notification was issued till the 13th April 1949 and even when that notification was issued Government did not choose to answer the plaintiff's notice of the 4th April 1949 by telling that a notification has been issued, that the proper officer has been appointed, and that he will fix the compensation for the plaintiff. If the plaintiff had been given the intimation, very likely he would never have filed the suit on the 27th June 1949. Therefore, in my opinion, Government should pay the costs of this suit to the plaintiff and bear their own costs and also pay the costs of this revision application. I also direct that the officer appointed under section 8 should determine the compensation as expeditiously as possible.

By order of the Court.

Sd/- S. H. Belavadi,
Deputy Registrar.

True copy.

Sd/- .....,
for Deputy Registrar,
The 7th day of May 1952.

3/53

No. 1526 of 1953.
1-12-1953.

To

The Remembrancer of Legal Affairs, Bombay.
Secretariat, Bombay Castle, Bombay No:1.

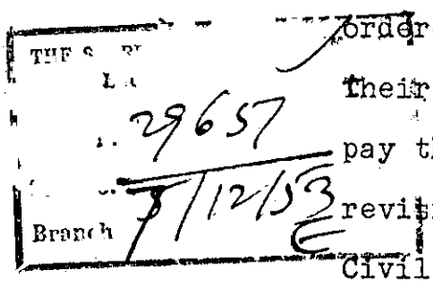
Subject:- Bijapur Civil Suit No. 154 of 1952.

Sir,

I have the honour to state that the above suit was dismissed yesterday and the parties were ordered to bear their own costs.

2. I have forwarded herewith an uncertified copy of the Judgment.

3. I am of opinion that in so far as the plaintiff's suit has been dismissed ~~with costs~~, no appeal should be preferred in respect of the order to the effect that the parties are ordered to bear their own costs. In the case of State of Bombay vs. Parusram Damodar which was the subject-matter of Civil Revision Application No. 224 of 1951, the High Court held that the suit was barred and accordingly ordered the suit to be dismissed. But with regard to costs their Lordships passed an order that the Government should pay the costs of the suit and also the costs of the revision application. In the suit in question, the learned Civil Judge has passed an order directing the parties to bear their own costs. I am therefore of opinion that this is not a fit case for prefering an appeal in respect of the order as to costs.



Yours faithfully,

District Govt.Pleader,Bijapur.

Submitted for information
Appeal for costs is not necessary

7/12

Costs being matter of discretion of the court no appeal ought to lie merely on a question regarding costs

29 713

Received on 2-6-1952.
Registered on 18-6-1952.
Decided on 30-11-1953.
Duration:- 1Y.-5M.-12 ds.

In the Court of the Civil Judge Sr.Dn.Bijapur

at Bijapur

Civil Suit No. 154 of 1952.

Shri K.G. Kurandwad.

1. Dattatraya Kashinath Chhatre, age 63, Landlord of Bijapur. ...plff.

against.

District Govt. Pleader (Shri A.C.Angadi).

1. The State of Bombay. .... Defendant.

Claim Rs 3100/-.

The plffx sues to recover Rs 3100/- from the defendant together with the costs and future interest.

The plff alleges that the agent of the defendant (i.e. the Collector) requisitioned 7 shops in the C.S.No. 1743 on 27-4-1949 and returned them to the former on 27-9-1949 . Plff says that the rental value of those shop was Rs 3500/- p.a. and that the Collector did not pay any r nt of them. though it amounted to Rs 1750/- for the said period and though the Collector is bound to pay the said sum together with one month's rent of Rs 350/- for th period of one month's notice. He also alleges that the Collector also requisitioned 4 shops in C.S.No. 1712 on 13-5-1949 and vacated them on 13-9-1949. He says that the rental value of them for a period of one year would be Rs 2300/- and that the defendant is liable to pay Rs1000/- in all respect of the said shops for the said period and for additional one month. He says that he wrote a number of letters to the Collector that he did not heed to plff's demand. Hence the suit.

2. The deft in its W.S. Ex.12 stated that the Collector took possession of 7 shops in C.S.No. 1743 on 3-5-1949 and delivered possession of them to the plff on 11-6-1949 and that the possession of 4 shops in C.S.No. 1712 was taken on 17-5-1949 and they have vacated on 13-9-1949. It denied the correctness of the allegations

in respect of the rental value of the buildings and stated that the claim made by the plff was excessive. It challenged plff's right to demand the additional rent of one month. It contended that the compensation officer alone can fix up the compensation under the provisions of B.L.Requisition Act and that the Civil Courts had no jurisdiction to entertain the present suit. It stated that the rent or compensation for the buildings in suit would be Rs 150/- and Rs 30/- p.a. month. It prayed for its costs.

The following issues were framed at Ex.22.

Issues.

(1) Whether the deft proves that underBLand Acquisition Act, the rent cannot be claimed and that this ~~xxxxxx~~ Court has no jurisdiction to determine the rent of the suit building ?

(2) Whether the amount of rent claimed is excessive ? if so, what rent should be awarded to the plff ?

~~(2)~~

(3) Whether the plff is entitled to claimthe rent for a period of additional one month ?

(4) What is due to the plff ?

(5) What decree ?

My findings:-

On issue No. 1)
" 2) Not taken up for consideration.
" 3)
" 4)
" 5 As per final order.

Reasons.

On the date of hearing, the learned Govt.pleader stated that their Lordships of our High Court had decided in Civil R evision Application No.224/51(i.e in the matter of the State of Bombay vs. Parusharam D.Vidya) on 25-1-1952 that the Civil Courts had no jurisdiction to entertain the suits of the present nature under the provisions of the Bombay Land Requisition Act. He also showed me the certified copy of the said judgment. The learned pleader for the plff too perused the said copy of the judgment and stated th t he would not press for the suit. But he argued that plff s costs should be awarded from the deft. I need not therefore record my findings on the first four issues. Thus, the first four issues were not taken up

for consideration in this suit as the learned pleader for the plff conceded that the present suit was not tenable under the provisions of the B.L.R.Act.

The question now remains of the costs of the suit. The learned pleader for the plff stated that the plff had no knowledge of the fact. That the deft had appointed the Collector of Bijapur or some one as the compensation officer under the Act and that the Collector did not inform the plff of this fact though several letters of demand of suit were sent to the Collector treating him as the requisitioning officer. He, therefore, pressed for plff's costs.The learned Govt.Pleader argued that the deft had published in the Govt.Gazettee about the said appointment of the compensation officer prior to the dates of the requisitioning of both the buildings and that the plff was not in any way justified in rushing to the Court without approaching the compensation officer. He therefore pressed for the costs of the deft. Both the learned Govt.pleader and the learned pleader for the plff argued on the point very vehemently and began to refer to the correspondence exchanged between the pkff and the Collector from 1949 to 1953 , though some of the letter had not been produced in the suit.

The plff should know that it was not the primary duty of the collector to inform the plff that the Collector had been appointed as the compensation officer under the L.R.Act when the said fact had been admittedly published in the Bom.Govt.Gazette in 1949 only. Moreover the plff ought to have made an inquiry before coming to the Court as to whether such an officer hasbeen appointed by the defendant. Thus the plff is not justified in claiming the costs by right. Similarly the collector would have informed the plff that he has been appointed as the compensation officer under B.L.Requisition Act and that he was the proper person to allow the reasonable compensation for

the buildings. The Collector ought to have at least informed the plff after the receipt of the notice under Sec.80 C.P.C. that the suit for the rent in a civil court was not tenable and that the plff should accept the reasonable compensation from the compensation officer, appointed by the deft (i.e. the Collector). As the said Act was a new one, it is likely that the plff did not get the correct information regarding the procedure to be followed in such matters. When the matter was pending for three years, the Collector would have got the fact of the appointment of the collector as compensation officer to the notice of the plff though the Collector was not legally bound to do so. In view of all these circumstances, I deem it proper and equitable to order the parties to bear their own costs.

Order.

B/ Plaintiff's suit stands dismissed. The parties do bear their own costs. /B

30-11-1953.

Sd.M.H.Kazi.
Civil Judge,S.D.

(ESD's No 1604/18-12-53) 87

33

DECREE.

Civil Suit No. 154 of 1952.

In the Court of the Civil Judge, Sr.Dn.Bijapur.

T. Dattatraya Kashinath Chhatre,
age 63, Landlord, Bijapur .... Plaintiff.

Vs.

1. The State of Bombay. ..... Defendant.

Claim Rs 3100/-.

Suit filed on 2-6-1952.

Suit Registered on 12-6-1952.

Herein, the plaintiff sues as under :-

1. The plaintiff is the owner of C.T.S. 1742,1743,1712 and 1713 situated in Ward No. II in the City of Bijapur. He has recently built a market in these city survey Numbers known as Chhatre's Market, consisting of many shops on the ground floor and many rooms and halls on the first and second floors, suitable for the purposes of offices for purposes and for shops.

2. The Collector of Bijapur as the agent and representative of and on behalf of the defendant requisitioned and took possession of seven shops on the ground floor with the total area of 1320 square feet in C.T.S.No.1743 on 27-4-1949 by his order C.T.N. 423(8). He subsequently vacated these shops on 27-9-1949. The Municipal rental value of these seven shops is Rs 35//- per year i.e. Rs 500/- per shop per year. The defendant has not paid any rent as compensation for the period of his occupation. The plaintiff wrote as several letters and reminders putting forth his demand; but the defendant has not given any definite reply, nor has he paid any rent. The plaintiff claims Rs 1750 as the total rent due for the period of his occupation plus Rs 350/- as the rent for one month in lieu of notice at Rs fifty per shop per month i.e. Rs 2100/- in all.

3. The Collector of Bijapur, on behalf of the defendant and as its agent and representative requisitioned four shops from out of the above mentioned market situated in C.T.S.1712(wrongly mentioned as C.T.S.1713 in the order)

by his order C.C.Y/shop/E.O.N.dated 13-5-1949 and took possession of the shops on the same day. These premises were vacated on 13-9-1949. The Municipal rental value of these four shops is Rs 2300/- per year. The plaintiff claims Rs 60/- as rent as compensation per shop per month and one month's rent in addition in lieu of notice. The plaintiff therefore claims Rs 1000/- (one thousand) in all on this account.

4. Other buildings situated near the suit premises though old and poor in material and structure fetch a monthly rent as compensation of two to three annas per square foot. The plaintiff has newly built the premises in suit at a great cost and hence the rent as compensation claimed by him is reasonable and proper.

5. The plaintiff wrote several letters and reminders to the Collector of Bijapur including the detailed reminders dated 19-7-1950 and 28-1-1951. But as yet no rent as compensation has been paid nor any definite reply has been received from the Collector so far.

6. Cause of action for the recovery of rent as compensation accrued on the 1st of every month from the commencement of the two tenancies.

7. The plaintiff and the defendant reside within the jurisdiction of this Court and the property to which the claim in suit relates is situated in Bijapur within the jurisdiction of this Court.

8. The suit is valued at Rs 3100/- and Court fee is paid on this amount. The same is the valuation for jurisdiction and for pleader's fees.

9. Notice as required by section 80 of the Civil Procedure Code has been served on the Collector of Bijapur on 25-2-1951 by Registered post.

10. Time for filing the suit having elapsed in the summer vacation, the suit is filed to-day on the opening day, is in time.,

11. The plaintiff prays :-

that a decree be passed against the defendant for the recovery of Rs 3100/- as claimed in paras 2 and 3 above together with costs of suit and future interest on the amount claimed from the date of suit till recovery.

35 OS

This suit came up for hearing before Shri M.H.Kazi Civil Judge,Senior Division, Bijapur on 30th November 1953 and after hearing Shri K.G. Kurandwadkar for the plff and Shri A.C.Angadi District Government pleador,Bijapur, for the defendant. the following order and decree is made as under:-

Plaintiff's suit stands dismissed. The parties do bear their own costs.

BILL OF COSTS.

For plaintiff	Rs A. P.	For defendant	Rs as ps.
1. Stamp forplaint	225-0-0	1. Stamp for Vakalat	0-10-0
2. Stamp for Vakalat	0-10-0	2. Stamps for applications.Exs.16,17,18,9, 10,11,23,25,26,29.	6-4-0
3. Stamp on applications Exs.7,14,15,16,20,23.	3-12-0		
4. Pleader's fee	167-0-0	3. Process fee.	- - -
5. Bhatta to witnesses	- - -	4. Pleader's fee	167-0-0
6. Commissioner's fee	- - -	5. Bhatta for witness	- - -
7. Process fee	3-12-0	6. Stamp for counter claim	- - -
8. Stamp on copies filed	- - -	7. Fee for counter claim	- - -
9. Stamp on cross objections	- - -	31/12/53	
	400-2-0		173-14-0
Costs disallowed.		Costs disallowed.	
1.Stamp on applications	3-12-0	1. Stamp on applications	6-4-0
2.Process fee	- - -	2. Process fee	- - -
3. Pleader's fee	- - -	3. Pleader's fee	- - -
	396-6-0		167-10-0

Given under my hand and seal of the Court.

This day of 30th November 1953.

Decree prepared by.

Sd.B.K.Kop.
Clerk.

Sd.M.H.Kazi.
Civil Judge,Sr.Dn.Bijapur.

Pleader for plff Sd.xx.
Pleader for deft Sd.A.C.Angadi.

Suits:

Bijapur.

For recovery of a sum of Rs.3,100 being the alleged amount of rent claimed by him in respect of seven shops.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10399/E
Bombay Castle, 22nd April 1954.

Read Government Resolution, Legal Department No.6641/E, Dated the 8th April 1953.

In the Court of the Civil Judge, (Senior Division), Bijapur.	Letter from the District Government Pleader, Bijapur No.1526, dated the 1st December 1953
Civil Suit No.154 of 1952.	
Dattatraya Kashinath Chhatre -- Plaintiff.	
vs.	
The State of Bombay. Defendant.	

stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Bijapur on 30th November 1953 when the following order was passed:-

"Plaintiff's suit stands dismissed. The parties do bear their own costs."

Letter from the District Government Pleader, Bijapur No.1526, dated the 1st December 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

R.T.Katarki
original (R.T.KATARKI),
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

KYK/21.4

Submitted for signature
21/4

S.S. 21/4

Sol (M.D.) 21/4 DS (Civil)

Signed 22/4

86 38

Fite in S. Bcj. 3/53

dh
-- 14 --

S.S [illegible]

S. Bij 3/53
24/4/54